

THE WAYS OF THE PROTECTION OF AUTHOR'S PERSONAL NON-PROPERTY RIGHT IN THE INTERNET

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Abstract: There is an uncertainty concerning law nature of author's right and rights on a name. Some scientists consider it to be an independent part of law while others suggest that this question should be studied in a wider scale, including all of the author's warrants on work. Consequently, there are several approaches towards the protection of author's right in the Internet. This article studies points of view towards the discussed problem expressed by different researchers. In addition to statutory acts that regulate author's rights, this article also studies works of the experts on civil rights concerning our topic.

Keywords: Author, work, author's right on work, disclosure of work, use of work, author's right protection.

INTRODUCTION

1. Introducing the Problem

Paragraph 1255 of the Russian Federation Civil Code (hereinafter – RF CC) contains the list of author's rights, including such personal non-property rights as right of authorship, right on name, right on inviolability of work, right on disclosure.

The right to demand the protection of honor, dignity and commercial goodwill is provided to the author in case his or her work has been disgraced by perversion, distortion or any other way, or if there were attempts of such actions. The legislation supposes that the damage to author's honor, dignity and business goodwill can be dealt by introduction of changes into original work. In practice, however, the usage of the work in its original form can compromise the author by being used in improper place or in a context within which the work is performed or demonstrated.

2. Importance of the Problem

An interesting place among author's personal non-property rights is occupied by the right on disclosure of work. According to the Paragraph 1268 of the RF CC this right means the conduction of actions or approval of such actions that make the work accessible to public for the first time. This article explains which actions can be caused by the disclosure of work. They include publication, public demonstration, public performance, the message in mass media or on cable network. The list has not been finished yet and still remains open. The right on disclosure, in addition

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to being non-property right, is also a property right and is intermedium as the work cannot be used without being disclosed. The work should be fully disclosed. The message about the work or its partial performance/demonstration will not be considered as a full disclosure.

It should be mentioned that work disclosure is a juridical fact, it changes author's legal status, lower his or her possession over the work and in some cases is a starting point of exclusive license on work. For instance, the work disclosed anonymously or under pseudonym has exclusive license terms of 70 years, starting from the January 1st the year after the work was legally disclosed. This law has one exclusion: if anonymous author or author under a pseudonym reveals his or her identity and the identity is not doubted exclusive license will be prolonged for extra 70 years starting from January 1st the year after the author died (part 2 of the Paragraph 1281 of the RF CC). Exclusive right also works for 70 years, starting from January 1st the year after it was disclosed after author's death in case it was disclosed during 70 years, starting from January 1st the year after the author died (part of the Paragraph 1281 RF CC).

RF CC further adds to important aspects to disclosure right. The first aspect concerns the right to hand work usage rights over to the third parties. According to the Paragraph 1268 of the RF CC the author that hands his or her work usage right over to the third party agrees on disclosure of work. It means that author's signing the agreement that mentions work usage can be considered to be author's agreement on work disclosure. The second aspect touches upon the works that have not been disclosed in author's lifetime (Sitdikova et. al., 2015). For such works there is a possibility of disclosure by body that has exclusive license for the work in case such disclosure does not contradict author's will, expressed by him in a diary, testament, etc. Another right closely tightened to disclosure right is the right to recall the work. Recall right is prescribed in the Paragraph 1269 of the RF CC, having thus an independent character.

Author's right law used to consider recall right to be a part of disclosure right. Such approach seems to be more precise as recall right is the right that acts in a narrower form than disclosure right. Such right can be applied only to ECM programs, as well as service works and works that are a part of a more complicated object. The author has an ability to abdicate from the decision to disclose the work, through the recall right mechanism, under the conditions of compensating the losses of bodies that were given exclusive license or work usage right by the means of recall right (Matveev, 2015).

In case the author uses his or her recall right after the work has been disclosed the author holds the responsibility of making public announcement of his or her decision (Kuzakhmetova et. al., 2016). In this case the author has the right to eject copies of work from public access, compensating losses caused by recall (Volkova

et. al., 2015). Nevertheless, the right to eject copies of the work has declarative character as it can meet complications. They include the impossibility of tracking and ejection thousands of copies of work written on CD disks, as it spread in hundreds retails stores and was purchased by even more amount of people (Illarionov, 2011, Kirillova et. al., 2016).

The ways of author's personal non-property rights were juridical guaranteed in the part 1 of the Paragraph 1251 of the RF CC. It includes such ways of protection as right acknowledgement, restitution of the condition that existed before author's rights violation, interception of the actions that violate author's rights or pose threat of such violation, moral damage compensation, and disclosure of court decision on committed violations. The first four methods work for all the civil rights. At the same time the last one – disclosure of court decision – is made legal by the article 1252 of the RF CC that was mentioned above, while it is realized according to the law "About mass media", Paragraph 35, which enforces mass media to publish court decision, that contains requirement of publishing such decision in mass media.

3. Hypotheses and Their Correspondence to Research Design

- 1.3.1. Author's personal non-property rights were identified in this article, the correlation of author's rights and author's rights on the work in particular.
- 1.3.2. It was found out on the basis of applicable legislation and systematical explanation that part 2 of the Paragraph 1266 of the RF CC concerns only encroachment on author's dignity, but not his or her honor and business goodwill.
- 1.3.3. It was ascertained that encroachment on the work content in a form of various changes means the encroachment on the whole idea and spirit of the work.
- 1.3.4. The possessor of exclusive license on the work gets the author's rights due to corresponding juridical condition, not due to legal succession.

METHOD

During the study the authors relied upon general and private methods of cognition: historical, legal, formal-legal, comparative legal, sociological and others. The main method is system-structural which helped to reveal the legal nature of self-regulatory organizations in connection with other phenomena, as well as the existing problems in this area.

The combination of legal, historical and comparative legal methods allowed us to identify specific impact of the historical conditions at the development of self-regulation in Russia, in particular the combination of the of private and public legal nature.

Formal legal method made it possible to analyze legal rules governing self-regulatory organizations activity describing features of self-regulatory organizations (SRO), attributing them to subjects of private and public law.

On the basis of the sociological method, suggestions and recommendations are based with respect to the specific information obtained from official sources, materials, periodicals, Internet resources, standards, legal-reference systems and the media grounded conclusions were made.

Systemic-structural method provided the authors with the opportunity to review self-regulatory organizations as subjects of public and private law.

RESULTS

Studies and analysis of the literature and applicable law concerning author's personal non-property rights protection made it clear that these rights have several unique features. Author's personal non-property rights, as well as other non-property rights, are characterized by the absence of material content and unbreakable ties with the right bearer, it is non-expropriate; any agreements and assumptions on handing these rights over to the third body, as well as rejection of the author's rights are considered to be of no significance. At the same time the law contains author's saving his or her rights on the possession of exclusive license on disclose right and inviolacy right. The possessor of exclusive license on work has such rights due to juridical condition that includes author's death and the possession over exclusive license by him only, not due to legal succession. Author's work is a reflection of his or her inner world. This matter is extremely complicated and variegated as honor and dignity are moral categories and their borders vary for each individual. During the trials on the author's honor and dignity violation it is necessary for a judge to try to understand author's identity and inner world and to base the judgment on inner world of an average person (Sitdikova & Shilovskaya, 2015). Thus, applicable legislation paid attention to experience of two separate laws in the field of work inviolacy of right. The first of them is part 1 of the Paragraph 1266 of the RF CC that does not allow introduction of any changes, cuts or additions to works without author's approval, as well as the addition of illustrations, prologue, epilogue, commentaries or any other forms of explanation. The second is part 2 of the Paragraph 1266 of the RF CC, which gives an author the right to demand the protection of his or her honor, dignity and business goodwill if they were violated (or there was an attempt of violation) in the form of perversion, distortion, or changes of the content.

DISCUSSION

Speaking about the theory of author's right several approaches towards the definition of author's right and author's right on a name should be taken into consideration. Applicable legislation considers these two rights to be independent, and RF CC

proposes the next explanations: “author’s right is the right to be acknowledged as an author of the work” and “author’s right on a name is the right to use or to allow usage of the work under author’s real name, pseudonym or without indication of the name (anonymously)”. Legislation mentions that these rights are non-expropriate and cannot be handed over to the third party in any way, including handing over the exclusive license on work. The rejection of these rights is considered to be of no significance.

At the same time some scientists expressed their point of view concerning the author’s rights and author’s rights on a name. For instance, B.S. Antimonov and E.A. Fleischits suggested the interpretation of author’s right and author’s right on a name as independent warrants within the field of right on a name (Antonimov, Fleischits, 1957), saying these two rights are interrelated and the violence on one of them means the violation of the second one as well. Thus, if the work was published by non-author body, under his or her own name or under the name of the third body, the author both protects his or her name and protect the right to acknowledged an author. This opinion is interesting indeed and it should be paid attention to. At the same time, it is hard to agree with such point of view as there were cases when author’s right was maintained while the author’s right on a name was violated. For instance, the publisher issued the work and indicated author’s real name, while he or she stated that the work should be published under pseudonym and thus author’s right on a name was violated without violating author’s right on the work.

Another interesting approach towards the problem was expressed by E.V. Romovskaya. She proposed wider approach towards author’s rights, including all author’s warrants on the work. In her research she wrote that “... the body that created the work is primarily considered to be an author due to the creation of the work, not due to the receiving of author’s right... in case the work is arrogated by the third body the author has right to demand defense of his or her interests due to the fact that the third body did not participate in work creation process, not due to his or her possession over author’s rights” (Romovskaya, 1979).

E.V. Romoskaya’s opinion is also interesting for establishing analogy between author’s right and property right. This analogy lead to the conclusion that “... after adaptation of the idea of author’s rights (with major adjustments) to property rights the author of the work can proclaim his being the owner of the work and demand that no other person would assign the rights on this work” (Romovskaya, 1979).

As it was mentioned above applicable legislation concerning author’s rights on a name provides an author with the right to act under his or her own name, under invented name (pseudonym) or without mentioning the name (anonymously). Nevertheless, I.V. Savelieva expresses the opinion that “author’s right on a name contains not only the author’s possibility to choose the way of mentioning author’s name but also the right to demand from the third bodies the mention of the name chosen by author in each publication” (Savelieva, 1986). Under such circumstances

the question rises whether such warrant should be considered separately from author's right. This statement is arguable as it is obvious that each author can demand maintenance of author's rights on a name from the third bodies.

Author's right on work inviolability, described in the Paragraph 1266 of the RF CC, is an evolution of the Paragraph 15 of the Russian Federation Act "About author's right and related rights". It gives an author "the right to protect the work, including its name, from any perversion or other encroachment capable of harming author's honor and dignity (author's right on reputation protection)". At the same time this article can be considered to be a comeback (at a higher level) to the Paragraph 479 of the Russian Soviet Republic Civil Code (hereinafter – RSR CC), dated by 1964. Among other rights it provided the author with the right on inviolability of his or her work. Such evolution in V.V. Doroshkov's opinion is adequate as the right on work inviolability is more reliable and effective mean of protection compared to reputation protection right only (Doroshkov, 2014). Thus, Paragraph 15 of the act about author's rights establishes author's necessity to prove the distortion of the meaning, in case such distortion causes or is capable of causing damage to author's honor and dignity. However, Paragraph 4 of the RF CC establishes requirements necessary only for introducing changes, cuts or additions into the work (Makovskiy, 2008).

V.V. Doroshkov comes to the conclusion that this act provides the author with the right to protect his or her work from any changes, no matter whether it damaged author's honor, dignity and business goodwill or not and independently from the form of the work (Doroshkov, 2015). Moreover, some scientists suppose that one should discuss "not the right of work inviolability, but the ways of encroaching author's by encroaching the work".

However, it is hard not to agree with the scientists that suppose that the formulation of the Paragraph 1266 of the RF CC is controversial if Paragraph 44 of the RF constitution is taken into consideration. This article establishes the principle of the freedom of creation. If the work is interpreted as a result of freedom of creation and expresses author's inner world, the encroachments on the work can be considered to the encroachment on author's inner world, his dignity in particular. If the encroachment on work negatively affects public attitude towards author and/or his or her work two options, are possible. The first option is when author is not bothered with this opinion and provisions of the part of the Paragraph 1266 of the RF CC will not be implemented. The second option is when author's honor and business goodwill are violated because of encroachments on the work and the author becomes dependent on the public opinion; it is violation of constitutional principle of creation freedom.

It follows from the systematic explanation that chapter 2 of the Paragraph 1266 of the RF CC touches upon the encroachment on author's dignity and not his or her honor and reputation (Illarionov, 2012).

It was mentioned above that the right to demand protection of author's honor, dignity and business goodwill is provided only in case they were violated by perversion, distortion or any other cause or if there was an attempts of such actions. V. Veinke commented it in his book in the such a way: "“Special type of violation” takes place not when the work was changed, but when unchanged work is used and demonstrated in the context that compromises the work” (Veinke, 1979). Consequently, it is reasonable to speak not only about the encroachments on the content on the work but also about the encroachment on its spirit.

In our opinion V. Veinke's point of view deserves extra attention as it was shown by questionnaires among musicians, conducted within our study, many cases of causing damage to honor and business goodwill of the musicians is connected with the context and conditions under which their original work was used (Veinke, 1979).

K.M. Meshkova mentions that the best instance of it is what happened with work by A. Pavlova: the song about the war named "Enemy", was performed at the meeting of the nationalist party without author's approval and not by the author. The performance was recorded and further uploaded to the Internet where it was distributed in thousands of copies (Meshkova, 2014). neither text, nor music were changed, but because of the context the line "Enemy always remains an enemy" received new meaning that was not designed by the author. It resulted in an unwanted interest towards author's works from some citizen groups and formation of a specific attitude towards author's works (Shilovskaya et.al., 2016). It can be considered to be a damage to author's honor and business goodwill (Sitdikova et. al., 2016). This example is also remarkable as the video was distributed without author's approval, which resulted in the violation of author's personal non-property right (Paragraph 1265 of the RF CC), as well as exclusive rights (Paragraph 1270 of the RF CC). Currently measures are undertaken to eject the video from all accessible resources.

Coming back to the thesis that the work is a reflection of author's inner world it should be mentioned that this matter is extremely complicated and variegated as honor and dignity are moral categories and their borders vary for each individual. During the trials on the author's honor and dignity violation it is necessary for a judge to try to understand author's identity and inner world and to base the judgment on inner world of an average person.

CONCLUSION

It can be said in the conclusion that literature analysis and applicable legislation concerning author's personal non-property rights protection made it clear that these rights have several unique features. Author's personal non-property rights, as well as other non-property rights. are characterized by the absence of material content and unbreakable tights with the right bearer, it is non-expropriate; any agreements and assumptions on handing these rights over to the third body, as well as rejection

of author's rights are considered to be of no significance. However, the legislation ensures author's saving his or her rights on the work after death, as well as the rights on work inviolability and work disclosure. In other words, the possessor of exclusive license on work has such rights due to juridical condition that includes author's death and the possession over exclusive license by him only, not due to legal succession.

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